IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 545 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

NAYANKUMAR RASIKLAL GANDHECHA

Appearance:
1. Civil Revision Application No. 545 of 2001
MR PV HATHI for Petitioners No. 1-2
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 13/12/2001

ORAL JUDGEMENT

#. This Revision is directed against an order passed by

the learned 6th Joint Civil Judge (S.D.), Jamnagar on 9.8.2000 below application Ex.13 filed by the present applicants - original defendants under Order-7 Rule-11 of the Civil Procedure Code to either reject the plaint or return the same.

#. The brief facts disclose that the present respondent was working as a Chokidar in Panchayat Rest House preferred the Regular Civil Suit No.271/2000 in the Court of Civil Judge (S.D.) Jamnagar contending therein that he was working as a peon-cum-Chokidar since 1987 in the Rest House at Jamjodhpur. It was also contended that he was given artificial break in his service by the defendant Panchayat. It was also contended that even though he had rendered service for more than 240 days and he was entitled to all benefits of permanent employee, his services were terminated on 31.3.2000 by oral order in breach of Articles 14 and 16 of the Constitution of India and relevant recruitment rules. He asked declaration that he should be declared to be continued in service till retirement and that till then i.e. till superannuation, the defendant panchayat is not empowered to release/retrench the plaintiff from his service. The declaration was also sought that the plaintiff be considered as permanent employee and the defendant panchayat is bound to consider the plaintiff as a permanent employee.

#. On service of summons, Ex.13 came to be filed by the defendant No.1 - District Panchayat and defendant No.2 Deputy Executive Engineer under Order-7 Rule-11 of the Civil Procedure Code stating that the dispute raised by the plaintiff vide his suit is squarely covered by the Industrial Disputes Act, 1947 and, therefore, this Court has no jurisdiction to entertain the dispute raised by the plaintiff. The other contention which was raised was regarding territorial jurisdiction because the plaintiff was working as a watchman - Chokidar at Jamjodhpur and the suit came to be filed before the Court of learned Civil Judge (S.D.) at Jamnagar.

#. After hearing the parties, while present applicant placed written arguments on record and the learned Judge vide his above order dated 9.8.2000 was pleased to reject the application of the present applicant original defendants on the ground that the dispute raised by the plaintiff was not an industrial dispute.

#. Heard the learned advocate Mr.P.V.Hathi for the applicant while original plaintiff is served.

#. On perusing the record and the relief claimed by the plaintiff and having perused the averments made in the plaint it clearly appears that the dispute which is raised by the present applicants is not the dispute which can be entertained by Civil Court. The averments in plaint itself clearly denotes that the plaintiff was given artificial break in the service denoting that the plaintiff was not a permanent employee of the District Panchayat. The learned advocate for the applicants further submits that the plaintiff was a casual worker and was appointed for doing some work wherever it was necessary. Needless it is to say that it is not at all difficult to come to a conclusion from the plaint itself that the plaintiff was not a permanent employee. Having gone through the relief claimed, it is clear that the plaintiff in turn on the basis of his temporary employment seeking declaration as to permanent status in the service and further benefit of permanent employee. The plaintiff further disputes his retrenchment from his service to be wrongful one. The relief in any manner may be worded but substance disclosing the above mentioned three ingredients and all the three ingredients viz. (1) continuous or temporary or casual workman (2) retrenchment of casual worker and (3) declaration as to permanent status in service are undoubtedly covered by the Industrial Disputes Act, 1947 and by no stretch of by imagination, it could be said that the dispute raised by the plaintiff in the suit is not in industrial dispute.

#. Then, the question arises that whether a Civil Court has jurisdiction to entertain the dispute which the plaintiff has raised in his above said suit. The law on this aspect is well established which perhaps has been overlooked by the trial Judge. In the matter of Premier Automobiles Ltd. vs. Kamlakar Shantaram Wadke, as reported in AIR 1975 Supreme Court 2238. The Supreme Court propounded the following four principles in respect of the jurisdiction of a Civil Court when Industrial Dispute is raised.

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor it to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

This Court in the matter of Chandrakant Tukaram Nikam vs. Municipal Corporation of the City of Ahmedabad, as reported in GLR Vol.34 1993, took the same view that when the dispute is covered by the Industrial Disputes Act the jurisdiction of Civil Court is impliedly taken away. The Supreme Court in the matter of Rajasthan State Road Transport Corporation vs. Krishna Kant, as reported in AIR 1995 Supreme Court 1571 reiterated the principles laid down by the Supreme court in the above mentioned case and observed that where once the dispute is covered by the Industrial Disputes Act the only remedy is to approach the forum created by the said Act. The Supreme Court again in the matter of Jitendra Nath Biswas vs. M/s. Empire of India and Cyclone Tea Co., as reported in 1992 (2)GLH 373 observed as under;

"It is clear that wherever jurisdiction of the Civil Court is expressly or impliedly barred, a Civil Court will have no jurisdiction. It could not be disputed that a contract of employment for personal service could not be specifically enforced and it is also clear that except the industrial law, under the law of contract and the civil law, an employee whose services are terminated could seek the relief of reinstatement or backwages. At best he could not seek the relief of damages for breach of contract. The manner in which the relief has been framed by the appellant - plaintiff in this case, although he seeks a declaration and injunction but in substance it is nothing but the relief of reinstatement and backwages. The relief which could only be available to a workman under the Industrial Disputes Act.

#. Therefore, it is clear that the dispute which is raised by the plaintiff is clearly covered under the Industrial Disputes Act and proper remedy to the plaintiff is to approach the forum as established under that Act and that the jurisdiction of the Civil Court is impliedly barred. It is not the case of the plaintiff

that his case is covered under the general or common law and that he is entitled to declaration he has sought for.

#. In this view of the matter, this Revision Application is required to be allowed. The order impugned passed below Ex.13 is set aside. Application Ex.13 is granted. The plaint of Regula Civil Suit No.271/2000 stands rejected as per Order-7 Rule-11 (D) because the Civil Court has no jurisdiction to entertain the suit. Rule is made absolute to that extent. No order as to costs.

(J. R. VORA, J.)

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